

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
(Not) Restricted
Suitable for Publication

Case No. CR-19-00195

DIRECTOR OF PUBLIC PROSECUTIONS

v

DIEU MAWUT ATEM

<u>JUDGE:</u>	Brimer
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	30 May 2019
<u>DATE OF SENTENCE:</u>	6 August 2019
<u>CASE MAY BE CITED AS:</u>	DPP v Atem
<u>MEDIUM NEUTRAL CITATION:</u>	[2019] VCC 1177

REASONS FOR SENTENCE

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr Mark Rochford QC	Ms Kara Thomson
For the Defendant	Ms Caitlin Blakeney	Greg Thomas Barrister & Solicitor

HER HONOUR:

- 1 Dieu Mawut Atem, you have pleaded guilty to an indictment containing one charge of recklessly cause serious injury contrary to s17 of the *Crimes Act 1958*, one charge of recklessly engaging in conduct that places or may place another person in danger of death contrary to s22 of the *Crimes Act 1958* and three charges of recklessly cause injury contrary to s18 of the *Crimes Act 1958*. The maximum penalty for the offences are 15 years' imprisonment, 10 years' imprisonment and 5 years' imprisonment respectively. You also pleaded guilty to one charge of driving a motor vehicle on a highway without being the holder of a driver licence or permit authorising you to drive contrary to s18(1)(a) of the *Road Safety Act 1986*. The maximum penalty for that offence is 60 penalty units or imprisonment for not more than six months. The offence was transferred to this court pursuant to section 145 of the Criminal Procedure Act 2009.
- 2 The circumstances in which you committed these offences are set out in the Summary of Prosecution Plea Opening dated 17 April 2019 which was read into evidence on your plea. In addition to making oral submissions, your Counsel relied on a written Outline of Submissions dated 24 May 2019. I have had regard to all oral and written submissions and exhibits tendered during the course of your plea when determining the appropriate sentence in your case.

Circumstances of the offending

- 3 Between 1 and 2 September 2018, you were living with your brother and another friend in Endeavour Drive, Cranbourne North. On 1 September 2018 you were at home with your brother and housemate, drinking alcohol and celebrating your brother's birthday. In the evening, more friends joined the group to continue celebrating your brother's birthday. The group decided to go to an event with live rap music at the Gasometer Hotel.
- 4 At approximately 9:30 PM you left your home in a Nissan Pulsar sedan (the car). There were a number of people in the car which was being driven by

another man. On the trip from Cranbourne North to Collingwood you drank more alcohol. At about 10:20 PM the car was parked in Mater Street Collingwood and you and the others got out and walked towards the Gasometer Hotel. You went inside and continued to drink alcohol.

- 5 At about 2:22 AM on 2 September 2018 a fight broke out in the bar area. You picked up a chair, raised it above your head and threw the chair into the crowd. It hit Magang Reech in the back of the head. This forms the basis of charge 5, causing injury recklessly. Shortly after the fight you got the single key to the car and left the club. Out in Smith Street, a further fight broke out, with you and another male hitting each other. You went to the ground and appeared to be unconscious for a little time and a number of others continued to assault you while you were on the ground. After a short time you got up and went to where the car was parked. You unlocked the driver side door with the key and started the car. Another person (Mr Voyi) was in the back of the car at this time.
- 6 You drove the car east on Mater Street, did a U-turn at speed towards Smith Street and went through a large group of young people who were on the street. You were driving on the wrong side of Mater Street and performed a second U-turn from the right lane into Smith Street around a street sweeper and into the oncoming traffic lane at Mater Street. You then proceeded at speed east along Mater Street over to Emma Street narrowly missing a further group of young people still in the street.
- 7 You then did a U-turn for the third and last time after crossing Emma Street returning west along Mater Street. You were driving at speed, accelerating towards a number of young people with some force. The group had to take evasive action by jumping out of the way of the car. The car went onto the left side of the road and at about 2:44 AM, collided at speed with the rear right hand side of a parked red Mazda sedan, and then into a gold Mitsubishi sedan pushing the Mitsubishi out of its parking spot. The Mitsubishi subsequently collided with a silver Volkswagen which was angle parked in the area. This is

the basis of charge 2, reckless conduct endangering life.

- 8 Whilst you were driving, 18 year old David Dada and Angoy Ngong moved off the road and were in between the rear of the gold Mitsubishi and the Volkswagen to avoid being hit by the car driven by you. Mr Dada was crushed in between the two parked cars which instantly shattered his right tibia and fibula. This is the basis of charge 1, causing serious injury recklessly.
- 9 Mr Ngong was knocked to the ground in the incident (charge 4 recklessly cause injury). He witnessed the injuries to Mr Dada and recalls seeing a bone poking out of Mr Dada's right leg. Mr Dada was bleeding heavily. Mr Ngong, with the help of police, wrapped his belt around Mr Dada's leg in an effort to stop the bleeding. Mr Ngong also took his shirt off and held it to Mr Dada's face as he had a big cut on the left side of his face.
- 10 Akot Majak was waiting for a taxi when he was hit by the car. He tried to jump out of the way of the car before being hit and knocked to the ground (Charge 3, cause injury recklessly). He recalls being on the ground for 20 minutes and not being able to walk. Mr Majak also witnessed the injuries to his friend Mr Dada.
- 11 The force of the impact between the two cars made the Volkswagen go up onto the footpath into a solid brick wall which resulted in bricks being pushed in and cracks emerging. The car being driven by you spun around and came to rest facing east in the middle of Mater Street with the airbags deployed in the front of the car. You were surrounded by people trying to get to you inside the car but the driver's side door could not be opened. You and the other person in the car got out of the car by the passenger side doors and left.
- 12 You travelled over Alexander parade and into George Street, Fitzroy, got into a passing taxi and told him to take you to the Cranbourne train station. You pre-paid a \$126 fare on your Commonwealth Bank card. Eventually, the taxi got near the area of the Cranbourne rail station but the \$126 was up and you got out and walked the rest of the way home.

Investigation, arrest and interview

- 13 On 2 September 2018 you were arrested at about 6:45 PM and interviewed. Initially you agreed you had been at the Gasometer hotel but stated that nothing happened inside and denied being the driver of the car in Collingwood. You stated that you *“got jumped, ran away, caught a taxi home”*. You stated further that you did not remember a lot of the night due to being hit in the head. At first, you denied being given the key to the car. However you later agreed that you were given the key to get something from the car, and after being *“jumped”* you do not know what happened to them. You agreed to provide a sample of your DNA. You were released pending further enquiries.
- 14 On Thursday, 13 September 2018 at 6:55 AM a search warrant was executed at your residential address. Items of clothing worn by you on the night of the incident were seized. At 8:16 AM you were arrested and taken to the Richmond police station for interview. You admitted driving up and down the street on multiple occasions and colliding into cars, admitted to being under the influence of alcohol and to never having held a driver's licence.
- 15 You stated that you had heaps to drink that day as it was your brother's birthday and to drinking more inside the venue. You said you were *“drunk as fuck”*. You also admitted that you have never had a driving lesson nor had you driven a car before this incident. When asked how many people were on the street when you were driving you responded *“I don't know... 200, people cuz, everywhere.”*

Effect on the victims

- 16 Mr Dada was taken to hospital by ambulance and due to the severity of his injuries, his right lower leg was amputated on 13 September 2018. Mr Dada recalls having six surgeries to his leg and at one point having a metal rod put into his bone. He reported being in a lot of pain.
- 17 Further to the injuries to his leg, he received stitches in his left elbow, his face

just under the left corner of his mouth extending up to his left cheek and to his left eyebrow.

- 18 Mr Dada was discharged from hospital on 9 October 2018 and transferred to the Epworth Rehabilitation Centre for further treatment, physiotherapy and recovery.
- 19 Mr Ngong was taken to hospital by ambulance along with Mr Dada. As a result of the incident he suffered a laceration to his right hand and experienced pain to his hip. When he arrived at the hospital he was suffering from shock and was placed on a drip. X-rays determined he had no broken bones.
- 20 Mr Majak was also taken to hospital by ambulance as he was unable to walk. He received three sutures to his lower right leg and was discharged in the early evening on 3 September 2018.
- 21 Records obtained from hospital reveal that Mr Reech suffered a 2 cm laceration to the top of his head which caused temporary dizziness and blurred vision. He required three sutures to close the wound and was discharged at approximately 5:26 AM the same morning.

Victim Impact Statement

- 22 Mr Dada's mother made a victim impact statement but expressed the wish not to have it read out in Court. The statement, in summary, expresses the effect on her, both emotionally, as a mother and financially, of the severe injuries caused to her child. I have had regard to the victim impact statement.

Plea of guilty

- 23 The matter resolved at the committal mention on 31 January 2019. I accept and take into account that you pleaded guilty at the earliest opportunity at committal mention which is indicative of remorse and demonstrates acceptance of responsibility. Your plea of guilty has facilitated the course of justice by

preventing community expense and the need for witnesses to come and give evidence in a trial of your matter.

Pre-sentence detention

- 24 You were remanded on 13th of September 2018. As at 6 August 2019 you will have spent 327) days by way of pre-sentence detention.

Personal circumstances

- 25 Your background and personal circumstances are described in the psychological assessment report of Ms Cidoni, Clinical Psychologist dated 4 October 2018 (**the Cidoni report**), in the progress report of Ms Dinsmore, Case Manager Southern Melbourne Youth Justice dated 28 May 2019, in the neuropsychological report of Ms Scott, Clinical Neuropsychologist dated 21 December 2018 (**the Scott report**) and in the letter from Ms Nealon and Mr Enticott, YSAS dated 29 May 2019.
- 26 In summary, you came to Australia in 2006 with your older brother and younger sister in the care of your paternal Grandmother when you were seven years old. This was as part of the humanitarian refugee program. You had been living between South Sudan and Kenya and were separated from your parents in a refugee camp. You recall this time, travelling between various locations in Africa.
- 27 Following arrival in Australia you moved many times. You were initially in the care of your uncle in Springvale, then in the care of your Grandmother. Whilst in the care of your Grandmother you moved around Victoria a great deal. This included to Dandenong, Noble Park, Cranbourne, Colac, and Pakenham. You had a great deal of respect for your Grandmother, however she became unwell and you and your brother (aged about 10 and 14 years respectively) ran the house, caught the bus, learned to cook and shared household tasks.
- 28 Your schooling was interrupted. Initially, you went to a language school then to

6 different primary schools and 3 different secondary schools. You left part way through year 10 but completed a year 10 equivalent at Berwick TAFE. Ultimately you worked labouring in roofing and fencing.

- 29 In 2016 your Grandmother passed away. You were ill-equipped to deal with the feelings of grief and loss you experienced. You had a brief period of homelessness and began drinking. You also started associating with a negative peer group which, Ms Blakeney submitted, led to your court appearance in 2007 for theft of a motor car, armed robbery and failure to answer bail.
- 30 You were placed on a Youth Supervision Order in August 2017, having spent seven days on remand prior to sentencing being deferred and you being placed on the Youth Supervision Order. You were held at Parkville Youth Justice Centre because you were a child at the time.
- 31 In 2017 you were employed at Lotus Folding Walls and Doors as a factory worker. This was a casual position. You were offered a permanent full-time position in May 2018, which you held until your remand in relation to this matter.

Nature and gravity of the offences

- 32 In pleading guilty to recklessly causing serious injury, you accept that you foresaw the probable consequences of your actions and were indifferent as to whether or not those consequences occurred. In respect of the charge of recklessly endangering life, you accept that you foresaw that placing another person in danger of death was a probable consequence of your conduct. These are extremely serious offences, which was accepted by your counsel at the outset. This is reflected in the maximum penalties for these offences.

Your culpability and degree of responsibility

- 33 Mr Rochford QC on behalf of the Crown submitted that the circumstances in

which you committed these offences make it a serious example of this offending. You drove backwards and forwards, up-and-down the street in a manner such that you could easily have killed a number of people. You nearly did. It was simply good fortune that you didn't.

34 Ms Blakeney submitted that you had the car keys because you intended to collect cigarettes from the car. It was in the aftermath of the assault on you, a consequence of which you were rendered unconscious for a period of time together with the alcohol that you had drunk, that you made the foolish decision to drive “...as a means of leaving the scene.” The location was unfamiliar to you and this, together with the alcohol that you had consumed had an impact on the turns that you made in the car. I note that you reported to Ms Scott that, having been struck in the head by your attackers, your next memory was of waking in a vehicle and becoming aware that you were driving. You recalled thinking “*What am I doing driving?*” and described being taken aback. When you went to look around to get your bearings, you crashed the car. This does not sit well with the explanation proffered to the court that you made the foolish decision to drive as a means of leaving the scene.

35 Ms Blakeney submitted that the effects of concussion and the impact of intoxication clouded your judgment. This does not provide an excuse for your conduct but provides an explanation. She noted that although Ms Scott identified that you presented with a traumatic brain injury, Ms Scott couldn't indicate in her report the point in time at which the brain injury was sustained. As such, Ms Blakeney did not submit that your intoxication or concussion were causative of your conduct. On the further plea, Ms Blakeney confirmed that she was not submitting that principles 1-4 in *Verdins* (2007) 16 VR 269 at [32] have application in this matter, as the material does not provide the necessary causal nexus.

- 36 Mr Rochford QC pointed to the way in which you were driving the car backwards and forwards as support for the view that you were intent on taking out your anger on anyone in the vicinity rather than that you were driving as a means of leaving the scene. I consider that the description of your driving as articulated in the prosecution opening, and accepted by you, in particular that you executed three U-turns is inconsistent with the submission that you made the foolish decision to drive “*as a means of leaving the scene*”.
- 37 That you had very little, if any, regard for the safety of those in the vicinity of the car you were driving is evident from the way in which you drove the car and which is captured, albeit briefly, by the images on the CCTV footage played during the prosecution opening. I accept the prosecution’s submission that this is a serious example of these offences and that the sentence imposed on you must reflect appropriate denunciation of this sort of offending.

Relevant sentencing principles

- 38 Ms Blakeney submitted on your behalf that as a young person, the principles in *R v Mills* (1998) 4 VR 235 are applicable. As such, I ought moderate the application of the principles of general deterrence in favour of a sentence promoting your rehabilitation. Those principles are in summary, that in the case of a youthful offender, rehabilitation is usually far more important than general deterrence. A youthful offender is not to be sent to an adult prison if such a disposition can be avoided, especially if he is beginning to appreciate the effect of his past criminality. The benchmark for what is serious in justifying adult imprisonment may be quite high in the case of a youthful offender and, where the offender has not previously been incarcerated, a shorter period of imprisonment may be justified.
- 39 In addition to relying on your youth as the basis for rehabilitation being given weight over general deterrence in the sentencing process, Ms Blakeney relied on the opinions expressed in the Cidoni and Scott reports. Ms Blakeney

submitted that a sentence of imprisonment will weigh more heavily on you given your cognitive impairments. She referred in particular to Ms Cidoni's opinion that you presented with borderline intelligence and your auditory memory index including delayed recall is in the borderline range. Ms Cidoni recommended more comprehensive cognitive testing. This cognitive testing was undertaken by Ms Scott and was for the purpose of examining your cognitive function and determining if you presented with an Acquired Brain Injury or neurodevelopmental disorder. I have had regard to the reports in their entirety but make reference to them only to the extent necessary to explain my reasons for sentence.

40 You presented to Ms Scott with prominent difficulties in information processing speed, higher attentional skills, memory and aspects of executive function. This is to be seen against a backdrop of relatively intact basic attention, working memory, language skills, visuospatial skills and intellectual function. Behavioural observations revealed signs of poor self-monitoring and difficulties with response inhibition (including perseverative tendencies). Difficulties with sustaining attention were also prominent on interview and assessment. Ms Scott considers that, although no medical assessment was undertaken at the time of this offending, your "*pattern of performance*" is consistent with a traumatic brain injury of at least mild severity.

41 She considers that you are in the sub-acute recovery phase following the traumatic brain injury, and your ongoing recovery leaves you particularly vulnerable to external influence. Your difficulties sustaining concentration could render you more likely to follow along with the decisions of others rather than making up your own mind about how to respond in a particular situation. You have difficulties in planning and organisation which undermine your ability to consider the future consequences of your actions. Trouble with memory recall means you would have difficulty identifying inconsistencies in information that others provide to you. This could make you more vulnerable to manipulation as

you would be less likely to be able to challenge faulty reasoning or arguments put to you.

42 Ms Scott considers that your cognitive impairments are likely to have a detrimental impact on your functioning in the prison environment and opines that there is a high risk of further deterioration in the prison context where you would have limited access to appropriate mental health treatment and supports. I accept the opinions expressed by Ms Cidoni and Ms Scott.

43 Ms Blakeney submitted that, in accordance with the principles set out by the court in *Verdins* (2007) 16 VR 269 at [32] as they relate to your time in custody being more onerous (principles 5 and 6), a sentence of imprisonment will weigh more heavily on you than it would on a person in normal health, and that there is a risk of imprisonment having a significant adverse effect on your mental health. These are factors tending to mitigate punishment.

44 It was submitted on your behalf that your demonstration of remorse and prospects of rehabilitation are factors which ought mitigate the sentence imposed on you. In support of the proposition that you are remorseful, apart from your early plea of guilty which is demonstrative of your acceptance of responsibility and remorse, Ms Blakeney relied on disclosures made by you to Ms Cidoni and Ms Scott. According to Ms Cidoni, you accept that your behaviour was wrong and you feel bad for the victims. You are aware that it could have been much worse and that people could have died. Ms Scott recorded that despite further prompting, you were unable to articulate your feelings of remorse, although it was apparent from your facial expression, gestures and attempts to explain that you felt sorry for the impact of your actions.

45 In support of your prospects of rehabilitation, Ms Blakeney submitted that you have demonstrated compliance with the Youth Supervision Order which expired on 29 February 2019. You attended 30 of 37 scheduled appointments whilst

under the Order. According to the progress report of Ms Dinsmore, you have demonstrated a history of positive engagement with Youth Justice and continue to show willingness to engage with the support and guidance that your care team can provide. You have the continued support of YSAS. You have also demonstrated an ability to maintain successfully, full time employment. You accept that your drinking is a factor that needs to be addressed and you have attempted to do so in custody. You have not been able to access a range of courses due to being on remand.

46 Ms Blakeney relied on the continued support of YSAS, your brother's preparedness to have you come and live back with him upon your release, and your employer's preparedness to re-employ you upon your release as supportive of your prospects of rehabilitation. Your first time in adult custody has had a sobering effect and will operate to deter you from future offending.

47 Mr Rochford QC drew my attention to your prior convictions in 2017 for theft of a motor vehicle, armed robbery and failure to answer bail. The circumstances of the offending included four serious armed robberies on soft targets in company with co-offenders. You committed these offences whilst you were on the Youth Justice Supervision Order. Although Mr Rochford QC accepted that you have some prospects of rehabilitation, he submitted they are guarded.

48 I accept that you engaged positively with Youth Justice in the year you were subject to the order before committing these offences, however, I agree with Mr Rochford QC that there is not a great deal of force to the submission that you complied substantially with the youth supervision order as demonstrative of good prospects of rehabilitation in circumstances where you breached the order by committing these offences. I accept Mr Rochford QC's submission that your prospects of rehabilitation are guarded, however I have had regard to the presence of good protective factors such as your ability to hold full-time employment which enabled you to send money to your family overseas and that by being employed full-time you contributed to the community. I have also had

regard to your brother's continuing support of you and preparedness to have you return to live with him when you are released. Further, your employer has indicated a preparedness to re-employ you.

49 Ms Blakeney submitted that I should take into account your personal circumstances, in particular your traumatic background including your separation from your parents, passage to Australia and dislocated education in Australia. On the further plea, she submitted that I should take those matters into account in a broad way in assessing your moral culpability, however did not take the submission any further.

50 Ms Blakeney submitted that I should take into account the impact of imprisonment on your citizenship status. You are a permanent resident but not an Australian citizen. Time spent in custody will be more onerous on you because of the burden of the unknown in relation to what will happen with your immigration status. Mr Rochford QC submitted that what happens with the Department of immigration is not for me to be concerned with, it is out of my purview.

51 The prospect that an offender is liable to deportation following sentence may be a relevant sentencing factor in two ways. One is hardship to the offender, uncertain as to whether at the end of his sentence he will be required to return to his country of origin. The other is the additional punishment to the offender because of a lost opportunity to settle permanently in Australia. (*Guden v The Queen* [2010] VSCA 196). Ms Blakeney's submission was in respect of the first only. You are a permanent resident and not an Australian citizen. As such, I take into account that you face hardship because of uncertainty as to your future in Australia.

Current Sentencing Practice

52 I am obliged to have regard to current sentencing practice in determining the sentence, though I note the guidance of the High Court in *DPP v Dalglish* (a

pseudonym) [2017] HCA 41, that current sentencing practices are one of the many factors that must be taken into account in sentencing. I have looked at the overview of cases in the Judicial College of Victoria Sentencing Manual. I have also looked at the Sentencing Advisory Council higher courts sentencing statistics. I note that for the offence of causing serious injury recklessly, a term of imprisonment was imposed in 78.6% of cases and a Youth Justice Centre Order in 2.6% of cases. There was insufficient data to confine the results of the search to males under age 20. In respect of the offence of reckless conduct endangering life, a term of imprisonment was imposed in 84.6% of cases and a Youth Justice Centre Order in 0% of cases. Again, there was insufficient data to confine the search to males under 20 years of age. As such, the statistics are of limited assistance.

- 53 Every case is different and the court must have regard to the individual circumstances of each case. In respect of your case, that includes the particular circumstances of this offending, your personal circumstances and the relevant sentencing principles that arise for consideration. This is what I have done.

Submissions

- 54 Ms Blakeney submitted that given your history, your personal circumstances and your youth, a period of confinement in a Youth Justice Facility for less than a period of 4 years is open and that is the order the Court ought make. She submitted that I can be satisfied that the preconditions to the making of a Youth Justice Centre order set out in section 32(1)(a) and (b) of the Sentencing Act have been made out. The court ought believe that there are reasonable prospects for rehabilitation, alternatively that you are particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.
- 55 Ms Blakeney relied on the Court of Appeal judgement *in DPP v Neethling* [2009] VSCA 116 to support her submission that a Youth Justice Centre Order can

provide an appropriate sanction for very serious offences, including driving offences which result in death and/or serious injury. The court observed that it has long been accepted that, as a general rule, rehabilitation should be a primary – if not the principal – concern in sentencing a young offender. I note, however, that the court also observed, that it is equally well established that this principle has sometimes to give way to other sentencing considerations. In that case, the result was the imposition of a youth justice centre order rather than the non-custodial sentence that was originally imposed.

56 Mr Rochford QC submitted that this is serious offending and that a sentence of imprisonment in an adult jail is called for. The Crown did not agree that a Youth Detention Order is appropriate in the circumstances; it is too serious. Your prior matters are for crimes of violence and these are crimes of violence with serious impact on the victims. Mr Rochford QC relied on the observations of the court in *The Queen v Lucas William Bell* [1999] VSCA 223 that the principles in *Mills* are general propositions and are not of universal or automatic application. Each case depends on its own circumstances, including the circumstances of the offence as well as those of the offender. Of significance in that case, the applicant, as is the case with you, was not a first offender. The case is therefore one where, “...*subject to any particular considerations, besides rehabilitation general deterrence and specific deterrence must bulk large in informing a sound discretionary determination.*” Mr Rochford QC also took the court to *The Queen v Elizabeth Anh Tran* [2002] VSCA 52, in which the court observed that although in the case of a youthful offender, rehabilitation is usually far more important than general deterrence, there are cases where just punishment, general deterrence or other sentencing objectives are at least equally important.

57 In light of the submissions made by Ms Blakeney, I ordered that a Pre-Sentence Report as to your suitability for a Youth Justice Centre Order be obtained. The Court received a report dated 28 June 2019, which was forwarded to the parties. In short, the authors of the report consider that you are suitable for detention

within a Youth Justice Centre on the basis that you meet both facets of the criteria set out in section 32(1) of the Sentencing Act. On the further plea, Mr Rochford QC confirmed the prosecution position that a term of imprisonment in an adult jail ought be imposed; the offending is too serious. Under the heading 'Current Situation' in the pre-sentence report, reference is made to two incidents of assaults and a make shift weapon having been found in your cell. This, Mr Rochford QC said reflects on your prospects of rehabilitation and confirmed his submission earlier made that they are guarded.

58 Ms Blakeney relied in particular on the confirmation of your remorse and expressions of insight contained in the pre-sentence report in support of your reasonable prospects of rehabilitation. Your access to specific programs on a Youth Justice Centre Order would benefit both you and the community. The incidents in custody are in the context of you defending yourself and Ms Blakeney said she is not aware of any charges following those incidents. I have had careful regard to the entirety of the report and to the submissions made by counsel in respect of the report in considering what sentence to impose on you.

59 Whilst I am satisfied that, on the basis of the Cidoni and Scott reports, and the pre-sentence report, you are particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison, that is not the end of the matter. Included in the matters set out in section 32(2) of the Sentencing Act to which I must have regard in determining whether to make a Youth Justice Centre Order is the nature of the offence. As I have said, I accept Mr Rochford QC's submission that this is a serious example of recklessly cause serious injury, recklessly cause injury and recklessly engaging in conduct that places or may have placed persons in danger of death. The injuries suffered by Mr Dada were horrendous and resulted in the loss of his right lower leg. Whilst the injuries suffered by the other victims, fortunately, were less serious, nevertheless they were injuries caused to people out at night with friends going about their business. The mobile phone footage taken and played during the prosecution

opening shows clearly the fear, panic and distress caused by you to those present. The sentence imposed must reflect denunciation of those who are reckless as to the infliction of serious harm on another person. Your decision to drive without a licence, whilst intoxicated and in the manner in which you drove as previously described require the sentencing objectives of deterrence, denunciation, just punishment and protection of the community to become more prominent in the sentencing calculus and the weight to be attached to youth to be correspondingly reduced.

60 Having carefully considered, balanced and weighed all of the matters referred to during the course of the plea I consider that a term of imprisonment in an adult jail must be imposed. Your youth is a factor to which I will give significant weight in setting a non-parole period. I have had regard to the matters raised in mitigation on your plea and consider that your sentence ought be tempered by those matters including your guilty plea, the impact on you of the matters addressed in the Cidoni and Scott reports, your personal circumstances including your traumatic background, hardship arising from uncertainty in respect of your permanent residence status, your expressions of remorse, your prospects of rehabilitation and the protective factors relied upon being your brother's preparedness for you to return to live with him and your employer's preparedness to re-employ you upon your release. I consider that it is both in your interests and in the community's interests to structure the sentence in a way that will allow for the possibility of release subject to supervision. I have fixed a non-parole period designed to facilitate that.

61 On each of charges 1,2,3 and 4, I sentence you to an aggregate term of imprisonment of 5 years. I consider that these offences are founded on the same facts, or form, or are part of, a series of offences of the same or similar character in accordance with section 9 of the Sentencing Act. There is both a factual and temporal nexus between the four charges. They are in respect of the same conduct, the objective gravity of which is serious.

- 62 On charge 5, I sentence you to a term of imprisonment of 3 months to be served concurrently with the term of imprisonment imposed in respect of charges 1-4.
- 63 On the charge of driving a motor vehicle on a highway without being the holder of a driver licence or permit authorising you to drive, I sentence you to a term of imprisonment of 3 months to be served concurrently with the sentence imposed on charge 1.
- 64 That is a total effective sentence of 5 years. I set a non-parole period of 3 years.
- 65 Pursuant to section 89A(1)(c) of the Sentencing Act, (as I have said previously, you have never held a licence), in all the circumstances, I order that you be disqualified from obtaining a driver licence or learner permit for a period of 5 years. I make a finding pursuant to section 89C of the Sentencing Act that the offence was committed while you were under the influence of alcohol which contributed to the offence.
- 66 I declare that there are 327 days pre-sentence detention to be reckoned as having been served under this sentence pursuant to section 18 of the Sentencing Act.
- 67 Pursuant to section 6AAA of the Sentencing Act, I declare that but for your plea of guilty, a sentence of 7 years imprisonment with a non-parole period of 5 years would have been imposed.